the appellant and of a witness called by him the Magistrate decided that Tay Koon Tien, who was apparently steering the boat at the time it was stopped by Customs officers, was the owner at the material time within the meaning of s. 30(7) of the Ordinance, and thereupon called him under the same section to show cause. At that point counsel for the appellant gave notice of appeal and the proceedings were adjourned.

Held: (1) in connection with a criminal cause or matter the word "order" is confined to those final decisions of a Court which affect parties to the proceedings in respect of their person or property; (2) in holding that Tay Koon Tien was the owner of the vessel the learned Magistrate did not make anything in the nature of a conclusive order in relation to the vessel. As the Magistrate had not made an order for forfeiture this appeal was premature.

[Editorial Note: Sir John Woodroffe in his **Criminal Procedure in British India** defines "order" as the formal expression of a decision of a Criminal Court not being a judgment of acquittal or conviction.]

MAGISTRATE'S APPEAL.

S. H. D. Elias for the appellant.

J. F. McWilliam (Crown Counsel) for the respondent.

Cur. Adv. Vult.

Whitton J. : — The Notice of Appeal in this case reads :—

"Gng Eng Hwoo who claims to be the owner of Cargo Boat bearing Licence No. SC. 8114 and Plate No. 1703, hereby gives Notice of Appeal against the Order made by the Seventh Police Magistrate on the 3rd day of August, 1954, declaring that one Tay Koon Tien is the owner of the said vessel within the meaning of Section 30(7) of the Dangerous Drugs Ordinance, 1951."

I have set out this Notice of Appeal "in extenso" because, although at the hearing of the appeal argument by both counsel was directed to the substantive merits of the question whether the appellant was the owner of the boat referred to, I have on reflection come to the conclusion the first matter to be decided is whether the so-called order of the Magistrate is appealable at all.

In the lower Court the proceedings started with the prosecution of another Chinese for alleged unlawful possession on board this boat of raw opium in contravention of the Dangerous Drugs Ordinance. That Chinese was acquitted but the Magistrate held an offence under the Ordinance had been committed, and under Section 30(3) asked the owner to show cause why the vessel should not be forfeited. After hearing the evidence of the appellant and of a witness called by him the Magistrate decided that one Tay Koon Tien, who was apparently steering the boat at the time it was stopped by Customs officers, was the owner at the material time within the meaning of the Ordinance, and thereupon called upon him under the same section to show cause. At that point Mr. Elias gave notice of Appeal on behalf of the appellant and the proceedings were adjourned.

Now Section 296 of the Criminal Procedure Code reads :—

"296. — (1) No appeal shall lie from a judgment sentence or order of a criminal Court except as provided for by this Code or by any other law for the time being in force.

(2) No appeal shall lie from a judgment, sentence or order of a Police Court in any of the cases specified in Schedule C."

It is clear then no appeal can lie unless the Magistrate in, to quote his own words, finding Tay Koon Tien was the owner as defined in Section 30(7) at the material time made an order within the meaning of Section 296. I have been unable to find any definition of the word "order" which appears to fit its use in this section, but my research into the matter has led me to the conclusion that in connection with a criminal cause or matter the word is confined, broadly speaking, to those final decisions of a Court which affect parties to the proceedings in respect of their person or property. Now in holding Tay Koon Tien to be the owner of the boat the learned Magistrate did not in my view make anything in the nature of a conclusive order in relation to the boat. Had the case proceeded to a normal end and the Magistrate then made an order of forfeiture it would be open, to the appellant to appeal as a person coming within the scope of Section 30(2). But in such circumstances were the Magistrate not to make an order for forfeiture I do not think for one moment it could be successfully maintained that the Magistrate's ruling as to ownership based on the highly artificial meaning given to the word "owner" in Section 30(7) of the Dangerous Drugs Ordinance had affected the legal title in the vessel which existed before the proceedings were instituted in the Magistrate's court.

For these reasons I agree with the learned Magistrate in considering this appeal was premature, and the appeal is dismissed.

Appeal dismissed.

Solicitors for the appellant : *Elias Bros.*

Re LIM SEE QUEE, Decd.; LIM CHIANH FOOK v. TAN AH CHOOT (w) & ORS.

[O. C. J. (Whitton J.) November 2, 1954]

[Singapore — Suit No. 327 of 1950]

Will — Forfeiture clause — Validity and operation of.

This was a summons for directions as to whether in the events that had happened the plaintiff, who is a son of the testator, had forfeited his share under the Will of the deceased. Clause 25 of the Will reads as follows: "I declare that if any beneficiary hereunder shall become

bankrupt or assign charge encumber or attempt to assign charge or encumber his or her share or shares in my estate or suffer something whereby the same or some part thereof would by operation of Law or otherwise if belonging absolutely to him or her become vested in some other person or persons such beneficiary shall forfeit his or her share or shares which shall thereupon devolve as hereinbefore provided in case of his or her death." It appeared that the plaintiff had entered into contracts relating to his share in the estate, which the learned Judge in this case held to amount to equitable assignments.

Held: (1) the forfeiture clause in this case was valid; (2) the transactions entered into by the plaintiff amounted to an equitable assignment of his share and these transactions attracted the operation of the forfeiture clause with the result that the plaintiff has forfeited his share in the estate under the testator's will.

Cases Referred to :—

(1) *In re Forder* (1927) 2 Ch. 291.
(2) *In re Smith* (1916) 1 Ch. 369.
(3) *In re Lind* (1915) 2 Ch. 345 at 360.
(4) *In re Gillott's Settlement* (1934) 1 Ch. 97.
(5) *In re Haynes Will Trusts* (1949) Ch. 5.
(6) *Commissioners of Inland Revenue v. G. Angust & Co.* 23 Q.B.D. 591.
(7) *Gentle v. Faulkner* (1900) 2 Q.B. 267.

APPLICATION.

Philip Hoalim Sr. for the plaintiff and one of the assignees.

N. A. Mallal for the 1st defendant.

W. Munro for persons interested in arguing that plaintiff had forfeited his share under the will.

Eric Choa for two assignees.

K. E. Hilborne for an assignee.

R. H. Green for an assignee.

Cur. Adv. Vult.

Whitton J. : —This is an application by the executrix of the Will of the late Lim See Quee for directions as to whether in the events that have happened the plaintiff has forfeited his share in the deceased's estate under the Will. The application arises out of certain transactions in relation to his share entered into by the plaintiff, who is a son of the testator, between 21st February 1951 and 2nd September 1953, and the question for determination is whether in consequence of these transactions a forfeiture clause in the Will now operates against the plaintiff. It is common ground that the period of distribution was 11th December 1953.

The forfeiture clause (25) reads as follows:—

"I declare that if any beneficiary hereunder shall become bankrupt or assign charge encumber or attempt to assign charge or encumber his or her share or shares in my estate or suffer something whereby the same or some part thereof would by operation of Law or otherwise if belonging absolutely to him or her become vested in some other person or persons such beneficiary shall forfeit his or her share or shares which shall thereupon devolve as hereinbefore provided in case of his or her death."

Mr. Munro in arguing that the plaintiff's share has been forfeited pointed out that there were two main points to be decided in determining the issue — (1) Is Clause 25 valid in itself? (2) Do any of the transactions of the plaintiff referred to above attract the operation of the clause? I shall proceed to deal with these two points in turn.

In contending Clause 25 was valid Mr. Munro relied on *In re Forder*[1]. The wording of the forfeiture clause in that case and in the present case is to all intents and purposes the same, and so the English case is clearly helpful in considering our problem. It had been held earlier in *In re Smith*[2] that the forfeiture clause could not be split up so as to be pronounced valid as to contingent gifts only, and that consequently in that case the whole clause was void for repugnancy. But in *In re Forder*[1], while this principle was fully acknowledged, the forfeiture clause was held to be good on the ground that it did not extend to any interest in possession, but only to interests in reversion. In holding this to be the position it seems to me that both Sargant L.J. and Lawrence L.J. regarded the words "devolve as hereinbefore provided in case of his or her death" as being conclusive. As our Clause 25 contains these identical words it appears to me that anyone maintaining the position is the same in the present case is on strong ground. Moreover I think the inclusion of these words answers both Mr. Hilborne's submission that the clause is bad as laying down no limitation to the time within which forfeiture is to take place and that of Mr. Hoalim that it is bad as applying to absolute as well as to contingent gifts. As to Mr. Hilborne's submission I would say that, while the wording of the clause can literally be interpreted in the way for which he contends, it seems to me much more likely what the testator contemplated was once a share had actually vested in a beneficiary the situation could not in fact arise in law of such share devolving under the Will in any other manner provided, and so I think a time limit that the forfeiture clause was meant to apply only to the time prior to the period of distribution is clearly implied. With regard to Mr. Hoalim's point I think it is obvious that the Will contains no provision covered by the words "shall thereupon devolve as herebefore provided" in respect of the absolute interests created by Clauses 13, 14 and 15, and, if this contention is accepted there is no reason to believe Clause 25 was intended to have any reference to the absolute gifts of the testator. For these reasons I hold the forfeiture clause to be valid. Before leaving this point I would add I find myself

unable to accept the suggestion that the plaintiff's interest was a vested interest subject to divestment.

I now turn to the second point, whether any of the transactions attract the operation of the clause. The law on this matter is set out authoritatively in a passage from the judgment of Swinfen Eady L.J. in *In re Lind*[3], which was quoted with authority in the later leading case of *Gillott's Settlement*[4] and which reads as follows:—

> "It is clear from these authorities that an assignment for value of future property actually binds the property itself directly it is acquired automatically on the happening of the event, and without any further act on the part of the assignor and does not merely rest in, and amount to, a right in contract giving rise to an action. The assignor, having received the consideration, becomes in equity, on the happening of the event, trustee for the assignee of the property devolving upon or acquired by him, and which he had previously sold and been paid for."

Further authority to the same effect is provided by *In re Haynes Will Trusts*[5], where, moreover, the forfeiture clauses bore a strong resemblance to that in the present case. In the light of these cases Mr. Munro's submission that each of the transactions of Lim Chianh Fook prior to the period of distribution amounted to an equitable assignment appears convincing. Consideration must be given, however, to the arguments put forward in support of a contrary view.

Before doing so it may be appropriate at this stage to say that in my opinion once it has been established even one of these pre-period of distribution transactions amounted to an equitable assignment then the forfeiture clause operates against Lim Chianh Fook in respect of his entire share in the estate. I have formed this opinion on three grounds. Firstly the language of the clause seems to me to support this construction. Secondly I think that it is unlikely that a testator who considered it desirable to include a forfeiture clause would intend to limit its effects to these portions of his share in respect of which the beneficiary actually made or attempted to make an assignment. Thirdly — though this is a point which admittedly would probably depend to some extent on the language of the forfeiture clause in each case — there is nothing in the cases cited above suggestive of a limited or partial forfeiture once the relevant clause has been brought into operation.

To follow the order of the arguments at the hearing Mr. Choa, appearing on behalf of the parties with whom Lim Chianh Fook entered into the agreements at page 35 and at page 37 of the Agreed Bundle, submitted that both were agreements to do something in the future and could not be either legal or equitable assignments. Applying the test of Swinfen Eady L.J. it seems to me that in respect of the first of these two agreements at least — that of 17th June 1952 — that an assignment for value of future property is exactly what this transaction was, and if I am right in so holding it plainly was an equitable assignment. The suggestion that the circumstance that it was to do something in the future somehow puts Lim Chianh Fook in a better position cannot, I think, carry weight; it is in fact precisely the undertaking to do something in the future which gets the beneficiaries into trouble in this kind of case. With regard to the second agreement the nature of Lim Chianh Fook's undertaking is perhaps more open to doubt, but, if I am correct in holding that once one equitable assignment has been established the forfeiture clause operates against the whole share, it is perhaps unnecessary to give a firm opinion on this second agreement. It was pointed out that the other parties to these agreements were taking a risk that Lim Chianh Fook might die before the period of distribution, but I do not see that the existence of this risk factor alters the nature of the agreements. Nor do I think *The Commissioners of Inland Revenue v. G. Angust & Co.*[6] helps Mr. Choa. It seems to me, with respect to him, these arguments only tend to show there was no legal assignment, whereas the fence he has to clear is to show there was no assignment of any sort. There might perhaps at first sight be some ground for drawing a distinction between an interest subject to forfeiture even after the beneficiary has entered into enjoyment of it, as in *In re Gillott's case*[4], and a contingent interest subject to forfeiture up to the period of distribution, as in the present case, but I do not think any such distinction really goes to the root of the matter, which is whether there has been assignment or attempted assignment.

Mr. Hilborne for his part has contended strongly that these transactions are not assignments, although he admits they were contracts. He suggests the plaintiff's actions in the transactions can be correctly shown in the following terms. He approaches the other party and says: "On 11th December 1953 I shall get this interest. Are you interested in taking a chance on it? If so I shall give you something in writing now." I think that the plaintiff might have given the other parties to these transactions something in writing which would not have created an equitable assignment, and a study of Maughan J's — as he then was — judgment in *In re Gillott's Settlement*[4] at p. 111 gives, it may seem some support to this idea, but I fear the difficulty from Mr. Hilborne's standpoint is that the "something in writing" which amounts only to a reliance on the good faith of the writer is unlikely to satisfy the man who is to hand over $10,000 or $20,000, whereas the something in writing which will

satisfy him in all probability amounts to an equitable assignment. Nor do I think Mr. Hilborne's argument based on the fact that the plaintiff had no property in his hands to be a trustee of can avail him. As a general authority on the point I would refer to a passage in *Lewin* on Trusts (15th Edn.) p. 89 :—

"If a person agree for valuable consideration to settle a specific estate, he thereby becomes a trustee of it for the intended objects, and all the consequences of a trust will follow; so, if he covenant to charge all lands that he may possess at a particular time, or at any time, he will be a trustee of such lands to the extent of the change."

Again I think the facts in *In re Haynes Will Trusts*[5], referred to above, are adverse to Mr. Hilborne's argument. I have also given careful consideration to the submissions against forfeiture based on *Gentle v. Faulkner*[7] in which it was held that there had been no breach of a covenant against assignment in a lease by a lessee who had made an equitable assignment but not a legal one. I would make two observations in this connection. Firstly, neither in *Gillott's case*[4] nor in *Haynes' case*[5] does any suggestion appear to have been made that *Gentle v. Faulkner*[7] was an authority that could be applied in those cases. Secondly, if one accepts the view that it was the testator's intention to endeavour to prevent assignment before the period of distribution it seems to me to follow it must have been equitable assignments the testator had in mind when the forfeiture clause was included since the beneficiaries would be in no position to make legal assignments prior to the period of distribution.

Mr. Hoalim submitted the argument that vendors in transactions of this nature became trustees for the purchasers only in cases where they were in a position to convey the land, on the principle that equity looks on that as done which ought to be, but once again I think the construction of the forfeiture clause is the dominant consideration, and if it is directed to prevent equitable assignments before the date of distribution it is hard to see how the question of possession affects the matter, and I doubt if the maxim has any application.

I do not consider, then, that any of the arguments put forward on behalf of the assignees, can succeed in the face of Mr. Munro's submissions that each of these transactions amounted to an equitable assignment, except perhaps in the case of that at page 37, the nature of which might possibly be more fully argued later if necessary, and I hold that the transactions at pages 30, 33, 35 and 39 of the Agreed Bundle created equitable assignments of the property to which they relate. I further hold that these four transactions, for the reasons I have given, have attracted the operation of the forfeiture clause, and the Court directs that in the events that have happened Lim Chianh Fook, the plaintiff, has forfeited his share in the estate under the testator's Will.

It was agreed that argument as to costs should be reserved.

In conclusion I would like to express the Court's particular thanks to Mr. N. A. Mallal, who appeared on behalf of the executrix of the Will, for so clearly setting the stage, if I may use the phrase, as to the issues for determination.

Order accordingly.

Solicitors : *Philip Hoalim & Co.; Mallal & Namazie; Allen & Gledhill; Oehlers & Choa; Hilborne & Murphy; Braddell Bros.*

LEE SWEE PENG (f) v. KOON KUM KENG

[A.C.J. (Bellamy J.) October 13, 1954]

[K. L. — Civil Appeal No. 22 of 1954]

Married Women and Children (Maintenance) Ordinance, 1950, s. 6(1) — Variation of maintenance order — Grounds for.

In this case the respondent, who was on June 11, 1954, ordered to pay to the appellant $50 per month for the maintenance of his 3½ year old child, applied to the Magistrate's Court to rescind or vary the same order. The respondent's only ground for the application was that he was unable to pay $50 per month.

In his ground of decision the learned Magistrate, in varying the order from $50 to $30 per month said, "The respondent in his examination before me states *inter alia* that he is a dispenser drawing a salary of $262 p.m. He is a married man and has to support an old mother of 61 years. His monthly expenditure amounts to $258.20. It appears that in order to meet the maintenance of the child, respondent must exercise strict economy in his expenditure. For this reason, I am satisfied that the respondent has shewn good cause for the variation of the order."

Held: before a maintenance order under the Married Women and Children (Maintenance) Ordinance, 1950, can be rescinded or varied by a Court there must be evidence before the Court either of a change in the circumstances of the person applying for rescission or variation of the order, or of some other good cause.

CIVIL APPEAL.

P. G. Lim for the appellant.

K. L. Devaser for the respondent.

Cur. Adv. Vult.

Bellamy J. : —This appeal must be allowed, and the order of the Magistrate dated 1st August, 1954 is set aside.

Before a maintenance order under the Married Women and Children (Maintenance) Ordinance, 1950 can be rescinded or varied by a Court there must be evidence before the Court either of a change in the